

## **PROTEST FINALIZATION PROCESS**

The following strategy will be used for expediting the surnaming process:

- Use of staff from appropriate groups and directorates to prepare draft protest responses.
- WO-210 will provide “heads up” to AD-200 when draft protest responses are ready for surnaming.
- AD-200 will provide “heads up” at staff meetings to alert Group Managers of the availability of draft protest responses.
- WO-210 will provide briefings for Group Managers (including GMs from other Directorates as needed) 2-3 days prior to obtaining necessary surnames. Requested changes should be substantive rather than editorial.
- WO-210 will conduct “working briefings” with the AD-200, Deputy Director, Chief of Staff, etc. (including Departmental staff as necessary) early in the process as possible and prior to approval of protest responses.

### **Protest Package**

A formal surnaming package should be prepared for each protest response. The format and content of the folder should include the following:

1. **Cover sheet prepared for surnaming by the following individuals:**
  - Protest Coordinator
  - Author (generally the WO-210 state liaison)
  - Deputy Group Manager (DGM)
  - Group Manager (at the discretion of the DGM or author)
  - WO Group Managers who have an interest in the EIS, Plan, or issues raised in a protest.
  - Deputy Assistant Director (DAD)
  - Assistant Director (AD) at the discretion of the DAD
  - Director (at the discretion of the AD)
  - Others at the discretion of the author
2. **The letter of protest, attached to the left side of the folder.**
3. **A Summary Brief (one or two pages) (attached to the left hand side of folder on top of the protest letter) in the following format:**
  - Background concerning the plan (or plan amendment) and the NEPA document (EA, EIS) - including what kinds of documents were prepared, when were they completed, etc;
  - Date the protest period closed;
  - Requirements statement as to whether all of the NEPA, FLPMA, regulatory, and policy requirements were followed by the BLM SO/FO;
  - Position of constituents or other sensitivities - factual, political, litigation, etc;
  - Summary of the issues in this protest and disposition of each issue (standing, germane, whether issue is protestable or if it was dismissed or treated as a comment and why;
  - Recommended Decision or if you're recommending remand (return) in whole or part, why

- and what are the circumstances;
- SO and FO Collaboration, who you worked with in the SO and/or FO and whether they've reviewed the draft letter; and
- WO Coordination, who you worked with in the WO (make sure they are on the surnaming sheet).

Note: for large numbers of protests, the above information may be arranged in a tabular format rather than preparing individual summary briefs for each protest.

**4. The Response letter attached to the right side of the folder, according to the following guidance:**

These are typical responses to protests where the State Director's proposed decision is being upheld. For protests where the State Director's proposed decision is being returned in whole or in part, or the boilerplate paragraphs below do not fit the protest, consult with the respective state liaison for the exact language.

Response Letter Format and Content Guidance

I. Boilerplate Paragraphs

Each letter of response should contain the following paragraphs:

Paragraph 1:

"The Bureau of Land Management (BLM) recognizes the importance of collaboration in the management of public lands and resources. Involving the public during the preparation of land use plans, which guide implementation of the BLM's multiple use mission, is especially critical. Land use plans are designed to balance the public demands for various land uses while ensuring appropriate levels of resource protection. While there may be times when BLM cannot meet the needs of all those interested in the public lands, BLM strives to address comments in a conscientious manner. In this spirit, BLM appreciates your involvement in the (name of plan)."

Paragraph 2:

"As the Assistant Director for Renewable Resources and Planning, I am responsible to the BLM Director for reviewing and resolving all protests of BLM's land use plans, including your protest of (date). The purpose of this letter is to inform you of the results of that review."

Paragraph 3:

For protests that are determined to be invalid because the protesting party does not have standing:

"As outlined in the Dear Reader letter for the proposed plan, the planning regulations at 43 CFR 1610.5-2 outline the requirements for filing a valid protest. I find that you do not meet these requirements because you have not participated in the planning process or you do not have an interest that is or may be adversely affected. Therefore, I am dismissing the protest." (optional: Even though your protest is being dismissed, you provided a comment(s), which is (are) addressed below.)

For protests that are determined to be invalid because they were filed after the protest period:

“As outlined in the Dear Reader letter for the proposed plan, the planning regulations at 43 CFR 1610.5-2 outline the requirements for filing a valid protest. I find that you do not meet these requirements because your letter was not postmarked (or received) by the required date. The regulations at 43 CFR 1610.5-2 do not allow for an extension of the protest period for any reason. Therefore, I am dismissing the protest.” (optional: Even though your protest is being dismissed, you provided a comment(s), which is (are) addressed below.)

For all valid protests that contain only issues:

“As outlined in the Dear Reader letter for the proposed plan, the planning regulations at 43 CFR 1610.5-2 outline the requirements for filing a valid protest. I find that you meet these requirements. Your protest issue(s) is (are) addressed below.”

For protests that contain both issues and comments:

“As outlined in the Dear Reader letter for the proposed plan, the planning regulations at 43 CFR 1610.5-2 outline the requirements for filing a valid protest. I find that you meet these requirements, in part, and therefore portions of your protest letter are considered a valid protest. I determined that your letter also contained a comment(s) which is (are) not considered a valid protest issue(s) because...” (explain why - “the comment(s) represent opinions or observations not substantiated with a concise statement of why the State Director’s proposed decision is believed to be wrong, contains issues not previously raised in the planning process, or the issues you raised are not germane to the planning process”, etc.). “The issue(s) and comment(s) are addressed below.”

For protests that contain only comments:

“As outlined in the Dear Reader letter for the proposed plan, the planning regulations at 43 CFR 1610.5-2 outline the requirements for filing a valid protest. I find that you do not meet these requirements because...” (see above). “Therefore, your protest is not valid and is hereby dismissed. Even though your protest is being dismissed, your letter contained a comment(s). That (those) comment(s) is (are) addressed below.”

## II. Issues Identified by the Protesting Party

In the response letters, issues should be addressed within separate paragraphs for the issue and response, in the same order as in the submitted protest letter. Issues should be quoted wherever possible. Where issues cannot reasonably be quoted (e.g. they are long, rambling or contain material not pertinent to the issues), they should be clearly summarized. It is sufficient to have some issues summarized and others quoted. The statement of the issue must capture all pertinent points addressed in the response. Comments should be addressed at the end of the response letter. Use the following format for addressing issues and comments:

**Issue/Comment #:****Response:**

Protest response letters should clearly document whether BLM followed the correct procedures in arriving at the proposed decision(s). Authors should identify any regulatory basis for responding to a protesting party's assertion. Don't argue or try to debate or defend the proposed decisions in the response. BLM's response to each issue should cite page numbers, where possible, in the NEPA document that specifically relate to the issue or comment and not rely solely on what was said in meetings or derived from notes, files, or phone calls. Focus on what was in writing or in the formal planning process.

**III. Comments**

Comments are addressed in the same manner as protest issues. The response letter must clearly identify why comments are not treated as protest issues, either in the opening paragraphs of the letter or the response to the comment.

Letters addressed to the protest coordinator stating that the comment did not qualify as a protest issue should be forwarded to the respective State Office. A letter should be sent to the sender from WO-210, informing the sender that BLM has forwarded the letter to the respective State Office for consideration as a comment.

**IV. Boilerplate Paragraphs after the Issues:****Decision**

For protests in which the State Director's proposed decision is being upheld (for protests in which the decision is being returned, in whole or in part, consult with your state liaison for the appropriate response):

"After careful review of your protest letter, I conclude that the BLM \_\_\_\_ State Director and the \_\_\_\_ Field Office Manager followed the applicable planning procedures, laws, regulations and policies and considered all relevant resource information and public input in developing the \_\_\_\_ Proposed RMP/Amendment/Final EIS. There is no basis for changing the Proposed RMP/Amendment as a result of your protest."

"This decision is the final decision of the Department of the Interior on your protest letter. The Interior Board of Land Appeals (IBLA) does not hear appeals from a decision by the Director of the BLM on protests concerning RMPs. Any person adversely affected by a decision of a BLM official to implement some portion of an RMP may appeal such action to the IBLA at the time the action is proposed for implementation."

“Thank you for your participation in the development of the \_\_\_\_\_ Proposed RMP/Amendment/Final EIS, and for your interest in the public lands. I encourage you to remain actively involved in BLM’s resource management activities and to provide information and input during the implementation of the plan. If you have any questions, or wish to further discuss any issues regarding the plan, please call \_\_\_\_, Field Office Manager, (\_\_\_\_) \_\_\_\_-\_\_\_\_.”